

# CHAPTER 4

## Implementation

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# Chapter 4

## IMPLEMENTATION

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### INTRODUCTION

This chapter discusses specific actions necessary to implement the plan. These actions include recommendations for adding areas to Chugach State Park, proposed state land selections, land use classifications, mineral orders, and the Public Trust Doctrine. This chapter also explains how municipal selections will be dealt with.

### AREAS RECOMMENDED FOR ADDITION TO CHUGACH STATE PARK

Several areas within the Turnagain Arm Management planning area are recommended for addition to Chugach State Park. These areas can only be added to the State Park by an act of the legislature. These recommendations are based on the outstanding public values in the proposed areas and the state's intent to retain these areas in public ownership.

#### Subunit 1b

All of Subunit 1b is recommended for legislative addition to Chugach State Park. This subunit consists of six small parcels totalling 433 acres. All of the parcels are currently managed by the Division of Parks & Outdoor Recreation (DPOR) under administrative actions, and are either adjacent to, or surrounded by the state park. Adding these parcels to the state park through legislation would improve state land management efficiency. Here are more detailed descriptions of these parcels:

#### McHugh Creek

(SW1/4 Sec. 20, T11N R2W SM, ADL 225945, 5 acres) This parcel is currently managed by DPOR under an ILMA. The recently developed McHugh Lake Trail traverses this parcel.

#### Rainbow

(Secs. 27&28, T11N R2W SM, OSL 888 & 886, 317 acres) Three parcels were conveyed to the state with the intent that they be used added to Chugach State Park. Another parcel (W1/2 SW1/4 Sec 28, T11N R2W SM, 80 acres) was omitted from the state park because of a legal error in the park's enabling legislation.

### Bird

(Sec. 9 T10N R1W SM, ADL 226191, 31 acres) This parcel is currently managed by DPOR under an Interagency Land Management Agreement (ILMA). This parcel is the site of the Bird Creek Campground, and has valuable scenic and recreational values.

### Subunit 2a

Subunit 2a includes approximately 5,500 acres within the Crow Pass Management Unit. The subunit includes Crow Pass and the mountainous ridge to the west of Crow Creek. This subunit is adjacent to the state park, and would be a logical extension of the park to include the highly visible and scenic mountain crest to the west and north of the Crow Creek Valley, and the historic Crow Pass (Iditarod National Historic) Trail.

## STATE SELECTIONS

The following are three state land selections within the planning area that DNR will defer asking for conveyance. Other state land selections in the planning area are priorities for conveyance.

### 1) Crow Pass (Subunits 2a and 2b)

The state selection on the Crow Pass subunits should be retained. State ownership would consolidate state land ownership and improve the efficiency of state land management.

### 2) Upper Winner Creek (Subunit 3c)

This subunit may play an important role in future resort development in the Glacier/Winner Creek area.

### 3) Bear Valley (Subunit 5c)

The state selected land in Bear Valley because of the strategic location between the Seward Highway Corridor and Whittier. The 320 acre selection straddles the Alaska Railroad alignment, and includes some of the only developable land between Portage and Whittier. The parcel was selected for community expansion and/or recreation purposes, either to aid in improving access to Whittier, or to provide additional land to accommodate future growth as a result of improved access to Whittier.

The Department of Transportation and Public Facilities is currently evaluating the feasibility of improving access to Whittier. DNR should not ask for conveyance to this selection until enough information is available to know how land use patterns will change as a result of improved access to Whittier.

## LAND USE CLASSIFICATIONS

This plan establishes land use designations for state land in the Turnagain Arm planning area. To implement the plan on state land, DNR must classify land into the classification categories listed in 11 AAC 55 in a way that reflects the plan intent. Land classifications are recorded on state status plats, and are the formal record of the primary uses for which each parcel of state land will be managed. The plan serves as the final finding by the Commissioner of DNR for land classifications for state land in the Turnagain Arm planning area.

Except for lands selected by the Municipality of Anchorage the land use designations in Chapter 3 will be converted to classifications shown in Table 4-1.

<b>TABLE 4-1</b>	
<b>Conversion of Land Use Designations to Classifications</b>	
<b>Designation:</b>	<b>Classification:</b>
Commercial recreation	Public Recreation Land
Materials	Material Land
Public recreation	Public Recreation Land
Resource management	Resource Management Land
Transportation	Reserved Use Land
Wildlife habitat	Wildlife Habitat Land

Land available for selection by the Municipality of Anchorage will be classified as Settlement Land regardless of the land use designation set by this plan. After this land conveyance process has been completed, any land that is not conveyed to the Municipality of Anchorage will be reclassified according to Table 4-1, using the land use designations set by this plan. See also *Municipal Selections* in this chapter.

## MINERAL ORDERS

Some state lands within the planning area have been closed to mineral entry prior to the development of this plan. In addition, this plan closes six small parcels within Chugach State Park to mineral entry, and reduces the area covered by a mineral opening order which is scheduled to take effect in less than ten years (see **Appendix B, Mineral Orders**). On the following page is a summary of the existing mineral orders, and of the mineral orders implemented by this plan.

### Existing Mineral orders

Mineral Closing Order #593 was implemented in April of 1991. This mineral order closed most of the Glacier/Winner Creek area and the Mt Alyeska Resort area to locatable mineral entry, because of potential conflicts with existing and future resort development. Mineral Opening Order # 603 was implemented concurrently, and will reopen the closed lands in ten years from the date that the land is conveyed to the state. This provides a "sunset clause" to the mineral closing order in case resort development does not occur. Most of Management Unit 3 (4,525 acres) was conveyed to the state on April 3, 1992. This land will be opened to mineral entry on April 3, 2002, unless a lease is issued by the state for the development of a ski resort, or the mineral order is amended.

Both Mineral Closing Order #593 and Mineral Opening Order #603 were concurrently amended in October of 1991 to include additional land selections in the upper Glacier Creek drainage.

Mineral Closing Order #593 was again amended in November of 1993 to include a portion of the Mt. Alyeska Resort Lease area not covered by the original mineral closing order. Mineral Opening Order #603 was not amended to cover this area.

### Mineral Orders implemented by this plan

This plan implements Mineral Closing Order #710 to close to mineral entry six parcels of land near the Seward Highway (Subunit 1b, totalling 433 acres). These parcels are surrounded by Chugach State Park, and are recommended for addition to the state park (see **Areas Recommended for Addition to Chugach State Park**, in this Chapter). The final finding and maps for this mineral order are in **Appendix B, Mineral Orders**.

This plan also amends Mineral Opening Order #603 to exclude the Alyeska Resort Lease area completely. Because resort development already exists here, the area should remain closed to mineral entry. It would create a conflict if the mineral closing order were to expire in ten years. The final finding and maps for the amendment to this mineral order are in **Appendix B, Mineral Orders**.

## PUBLIC TRUST DOCTRINE

Under the Alaska Constitution, the state has special duties and management constraints with respect to state-owned land underlying navigable waters. The Alaska Constitution contains provisions embracing the principles commonly known as the public trust doctrine. That doctrine, as it has evolved in court decisions over hundreds of years, requires the state to exercise authority to ensure that the paramount rights of the public to use navigable waters for navigation, commerce, recreation, and related purposes is not substantially impaired.

The Alaska Constitution (Article VIII, sections, 1, 2, 3, 6, 13, and 14) and Alaska Statutes (38.05.127 and 38.05.128) are the legal basis for applying the public trust doctrine in Alaska. This doctrine guarantees the public right to engage in such things as commerce, navigation, fishing, hunting, swimming, and protection of areas for ecological study.

The Constitution provides that "Free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the State, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes." Eliminating private upland owners' reasonable access to navigable waters may result in compensation.

Because 99 percent of Alaska was in public ownership at statehood, both federal and state laws providing for the transfer of land to private parties also provide for public access to navigable waters. Implementing the state constitutional guarantee of access to navigable waters under Article VII, Section 14, AS 38.05.127 requires that the state commissioner of natural resources must "provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or eliminating access is necessary for other beneficial uses or public purposes."

It has never been held that any lands normally subject to the public trust doctrine in Alaska are exempt from it, including land occupied and developed.

These statutes and concepts are considered and used throughout this plan. Any management actions shall be consistent with the public trust doctrine as defined by the Alaska Constitution, statutes, court decisions, and public involvement.

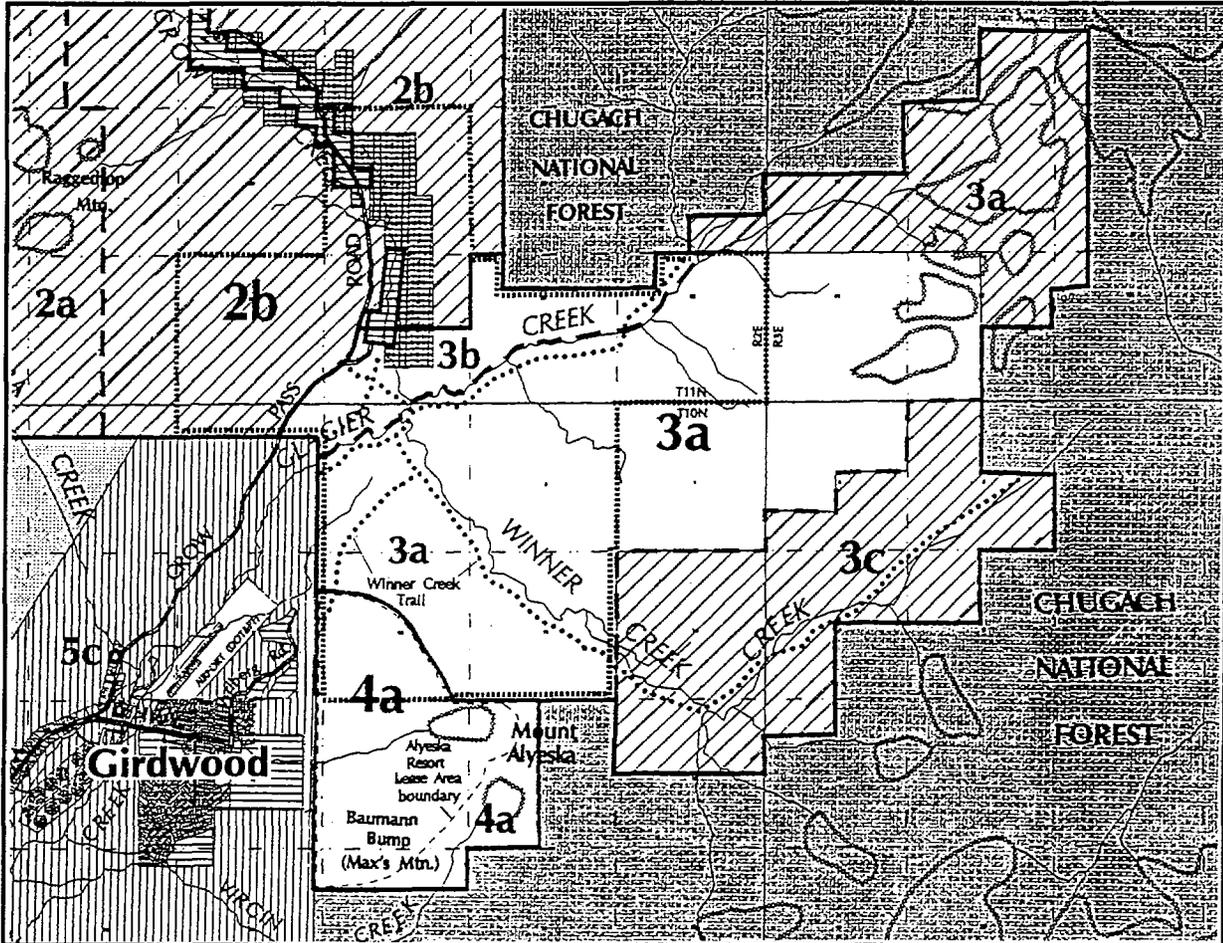
## MUNICIPAL SELECTIONS

On November 25, 1986, the Municipality of Anchorage and the State of Alaska entered into an “Agreement for the Conveyance of Lands of the State of Alaska to the Municipality of Anchorage, and Settlement of Land-Related Issues.” This agreement was necessary because there was not enough suitable state-owned land available to fulfill the Municipality of Anchorage’s municipal land entitlement, as allowed by the 1978 Municipal Entitlement Act. As part of that agreement, the Municipality of Anchorage was entitled to select up to 1,000 acres of land from state selected land in the Chugach National Forest in the upper Glacier Creek valley.

The Municipality of Anchorage is in the process of making final its land selection. The municipality is expected to focus its selection on the more developable valley bottom lands at the base of the Glacier/Winner Creek mountain massif. If resort development were to happen, the municipality would be responsible for resort base facilities, while DNR would be responsible for managing the upper mountain—ski trails, lifts, trams, etc.

To facilitate the transfer of land to the municipality, this plan will classify the area of potential municipal selections as Settlement Land (*see Map 4-1 on page 4-7*). Please refer to ***Land Use Classifications*** in this chapter.

# Map 4-1 Land Available for Selection by the Municipality of Anchorage



<b>Potential Municipal Selection Area</b>		Boundary of land available for selection by the Municipality of Anchorage. Land within this boundary will be classified as Settlement Land regardless of the land use designation set by the Turnagain Arm Management Plan. Any land that is not conveyed to the Municipality of Anchorage will be reclassified according to the Turnagain Arm Management Plan designations.
<b>Turnagain Arm Management Plan</b>		Management Unit boundary
		Subunit boundary
<b>Land Ownership &amp; Uses</b>		State owned
		State selected
		State selected and Federal mining claims
		Municipal owned
		Private
		Chugach State Park
		Chugach National Forest
		Alyeska Resort Lease Area

SCALE IN MILES 0 1 2 3 4



## INSTREAM FLOW RESERVATIONS

Instream Flow reservations establish a water right for a certain amount of flow in a stream or water-level in a lake. Instream flow may be reserved for the following purposes: fish and wildlife habitat, migration and propagation; recreation and park purposes; navigation and transportation; and sanitary and water quality purposes (Alaska Statutes 46.15.145).

Within the Turnagain Arm Planning Area, Glacier, Crow, Winner, Virgin, and Moose Meadows creeks may require instream flow reservations.

The relative importance and method of preserving instream flow in these rivers must be determined by further study. Examination of these rivers should be jointly undertaken by the DNR divisions of Land and Mining and Water Management, and the Alaska Department of Fish and Game. Further study may identify other rivers requiring instream flow reservations.

## RECOMMENDATIONS FOR OTHER AGENCIES

### Department of Transportation and Public Facilities

To the extent that funding and physical constraints allow, the Department of Transportation & Public Facilities should continue maintaining and improving the Seward Highway between Anchorage and Girdwood to ensure the safest possible travel for motorists, especially as traffic levels increase as a result of resort development.

### Division of Parks and Outdoor Recreation

When updating the Chugach State Park Management Plan, the Division of Parks & Outdoor Recreation should take into consideration the goals and policies of the Turnagain Arm Management Plan. The management of Chugach State Park will need to respond accordingly if a major destination resort is developed in the Turnagain Arm/Girdwood area.

### United States Forest Service

When updating the Chugach National Forest Management Plan, the U.S. Forest Service should take into consideration the goals and policies of the Turnagain Arm Management Plan. The management of the Chugach National Forest in the Turnagain Arm area will need to respond accordingly if a major destination resort is developed in the Turnagain Arm/Girdwood area.

## PROCEDURES FOR PLAN REVIEW AND CHANGES

The land use designations, policies, implementation actions, and management guidelines of this plan may be changed if conditions warrant. The plan will be updated periodically as new data and new technologies become available and as changing social or economic conditions place different demands on state lands.

### Plan Review

An interagency planning team should review the plan approximately once every five to ten years, to determine if conditions warrant updating the plan.

### Plan Changes

Changes to the plan will be made according to policies outlined in Title 11 of the Alaska Administrative Code (11 AAC 55.030(f)). 11 AAC 55 describes three kinds of changes: plan amendments, special exceptions, and minor changes. The current version of the relevant sub-section of 11 AAC 55.030 is given below.

Plan amendments require a written decision and public notice. If warranted by the degree of controversy, public meetings may be held before making a decision on a plan amendment. Special exceptions require a written decision, public notice and, if appropriate, public meetings. Minor changes are made through a written decision and do not require public review.

Some policies in the plan, such as those modified by the terms "feasible and prudent", "feasible", and "should" are written to allow exceptions if the condition in the policy are met. Most exceptions to guidelines are neither revisions or changes to the plan.

For procedural details, see the Division of Land Procedures Manual.

The current version of 11 AAC 55.030(f) provides:

- "1. A revision to a land use plan is subject to the planning process requirements of AS 38.04.065. For the purposes of this section and AS 38.04.065, a "revision" is an amendment or special exception to a land use plan as follows:
  - a. An "amendment" permanently changes the land use plan by adding to or modifying the basic management intent for one or more of the plan's subunits or by changing its allowed or prohibited uses, policies, or guidelines. For example, an amendment might close to new mineral entry an area that the plan designated to be open, allow a land use in an area where the plan prohibited it, or allow land to be opened to homestead entry in an area that the plan designated for retention in public ownership.

- b. A “special exception” does not permanently change the provisions of a land use plan and cannot be used as the basis for a reclassification of the subunit. Instead, it allows a one-time, limited-purpose variance of the plan's provisions, without changing the plan's general management intent or guidelines. For example, a special exception might be used to grant an eligible applicant a preference right under AS 38.05.035 to purchase land in a subunit designated for retention in public ownership. A special exception might be made if complying with the plan would be excessively burdensome or impractical, if compliance would be inequitable to a third party, and if the purposes and spirit of the plan can be achieved despite the exception.
2. A minor change to a land use plan is not considered a revision under AS 38.04.065. A “minor change” is a change that does not modify or add to the plan's basic intent, and that serves only to clarify the plan, make it consistent, facilitate its implementation, or make technical corrections."